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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C. 20554
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In the Matter of) MM Docket No. 95-31
)
Reexamination of the Comparative)
Standards for Noncommercial)
Educational Applicants)

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JAN 28 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF ELGIN FM LIMITED PARTNERSHIP

1. Elgin FM Limited Partnership (Elgin FM), licensee of commercial broadcast Station KKLb(FM), Elgin, Texas, submits the following comments in the above-referenced proceeding. By way of background, the principals of Elgin FM Limited Partnership have engaged in radio broadcasting in Texas for more than 28 years. Elgin FM currently has on file a pending application for a new commercial FM station to operate on Channel 257A at Thorndale, Texas (File No. BPH-970911MU). The Elgin FM application is mutually exclusive with five other applications, including an application filed by a non-commercial entity, Houston Christian Broadcasters, Inc. (HCBI) (File No. BPED-970911MA).¹

2. In its *Further Notice of Proposed Rule Making (FNPRM)*, FCC 98-269, the Commission reiterated its position that it would not proceed to auction in any case where both noncommercial and commercial applicants have filed competing applications for nonreserved channels, *citing, Competitive Bidding*, FCC 98-194, ¶ 25 pending the outcome of the instant rulemaking proceeding. *FNPRM*,

¹ The other four mutually exclusive applicants are: Centex Broadcasting Company, Ltd (File No. BPH-970908MT), Charles R. Crawford (File No. BPH-970911ME), Double K Broadcasting (File No. BPH-970911MT) and Roy E. Henderson d/b/a Jackson Lake Broadcasting Company (File No. BPH-970911MI).

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slip op. at ¶ 45, fn. 38. Elgin FM believes that until the Commission establishes universal rules on this score, there should be no case-by-case resolution of the myriad of issues involved where commercial and noncommercial applicants have filed for a nonreserved channel.

3. At the outset Elgin FM takes the position that all noncommercial educational (NCE) entities should be restricted to filing an application on the frequencies reserved only for educational use and therefore such restriction would eliminate the need to resolve the ability of NCE entities to participate in the competitive auction process. The reserved channels have already been designated by the Commission for such use, to the exclusion of commercial entities like Elgin FM. There is no further need to provide NCE entities with any further advantages than that which are already available to it. Indeed, the NCE applicant in Thorndale, HCBI, is already the licensee of three other radio stations: KHCB-FM, Houston, Texas, KHCB(AM), Galveston, Texas KKER(FM), Kerrville, Texas, and holds a construction permit for a noncommercial FM station at Wake Village, Texas (File No. BPED-970630MB). See Petition for Rule Making filed by HCBI in *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Thorndale, Texas)* on November 30, 1998, ¶ 1, fn. 3 (HCBI Petition). HCBI cannot be heard to complain as it obviously has not been disadvantaged by the Commission's rules and processes.

4. If in fact there is a genuine lack of access to frequen-

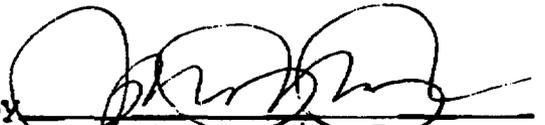
cies available to NCE entities, resolution of such purported shortage should be done on a universal basis, with such rules constructed and implemented fairly to all applicants. If the Commission is shown in this proceeding that such a genuine need exists, then it should consider opening the reserved channels to commercial applicants as well. If the Commission also believes that the fair implementation of the competitive bidding process requires that NCE applicants be permitted to bid in those instances where such applicants have filed on nonreserved channels and there exists other mutually exclusive commercial applicants, then such auctions at a minimum must be done on an even-handed basis. The Commission itself recognizes this where it notes that its rules in the past permit the filing by NCE entities applications for nonreserved channels, requiring however, that such NCE applicants compete under the rules applicable to commercial applicants. *FNPRM, slip op. at 19, ¶ 34.*

5. So too here. An example of why this must be the case can be gleaned from the actions of the NCE applicant in Thorndale, HCBI. HCBI has filed a petition for rulemaking seeking to have an additional nonreserved channel, channel 286A, allocated to Thorndale. It further requests that its application be amended to Channel 286A, and that Channel 286A be reserved for educational use. HCBI Petition, pp. 1-2. Elgin FM and the remaining commercial applicants, under HCBI's petition, would be left to battle it out for Channel 257A, the original allocation. While Elgin FM will no doubt address the specific issues presented in the HCBI

petition, if and when such opportunity presents itself, such a proposal falls far short of the Commission's mandate in affording equal access to all qualified applicants for new commercial frequencies. If HCBI had proposed channels for each and every applicant in the Thorndale proceeding, as well as one other allocation for any other interested party, a practice permitted under the Commission's rules, that would be one thing. Instead, for the mere fact that HCBI is an NCE entity, it seeks to circumvent the Commission's processes, at an unfair price to applicants like Elgin FM. The implementation by the Commission of policies and rules on a universal basis should prevent such unfairness from occurring. Elgin FM welcomes such relief.

Respectfully submitted,

ELGIN FM LIMITED PARTNERSHIP

By 

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January 28, 1999

CERTIFICATE OF SERVICE

I, Jose Jaime Garcia, Jr., on behalf of Elgin FM Limited Partnership, do hereby certify that on this 28th day of January, 1999, I have caused a copy of the foregoing to be served by first class United States Postal Service mail, postage pre-paid, on the individuals listed below:

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